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November 12, 1998

BY HAND DELIVERY

Magalie R. Salas, Esquire
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Supplement to Reply Comments
MM Docket No. 98-155
RM-9082;RM-9133

Dear Ms. Salas:

Transmitted herewith on behalf of Chisholm Trail Broadcasting Co., Inc., licensee of Station KXLS(FM), Alva, Oklahoma, is an original and four copies of its "Supplement to Reply Comments," filed in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate directly with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.



Andrew S. Kersting
Counsel for Chisholm Trail
Broadcasting Co., Inc.

Enclosure

cc (w/ encl.): Certificate of Service (by hand & first-class mail)
Mr. Dennis Williams (FCC) (by hand)
Mr. Glenn Greisman (FCC) (by hand)

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)	
and Woodward, Oklahoma))	

To: Chief, Allocations Branch

SUPPLEMENT TO REPLY COMMENTS

Chisholm Trail Broadcasting Co., Inc. ("Chisholm"), licensee of Station KXLS(FM), Alva, Oklahoma, by counsel, hereby supplements its "Reply Comments," filed November 3, 1998, in connection with the *Notice of Proposed Rule Making and Orders to Show Cause*, DA 98-1682 (released August 28, 1998) ("NPRM"), in the above-captioned proceeding. In support of this Supplement, the following is stated:

In its Reply Comments, Chisholm noted that on October 1, 1998, Ralph Tyler ("Tyler") notified the Commission that Station KTSH(FM), Tishomingo, Oklahoma, had "temporarily suspended" operations on September 28, 1998, "due to antenna failure." Chisholm Reply Comments, p. 4 and Attach. C. Chisholm also noted that during William H. Nolan's visit to the KTSH/KAZC transmitter site on October 30, 1998, Tina Smith showed Mr. Nolan a letter dated October 27, 1998, addressed to the Commission, in which Tyler requested authority to remain silent for an additional 90 days "pending the installation of new equipment." *Id.* at 8. Although the undersigned counsel made several efforts to obtain a copy of any further request that Tyler may have

filed with the Commission seeking authorization for KTSH to remain off the air for an extended period of time, these efforts had been unsuccessful at the time Chisholm filed its November 3, 1998, Reply Comments.¹

Chisholm is filing this Supplement in order to provide the Allocations Branch with a copy of the attached letter dated October 27, 1998, from James K. Edmundson, Esquire, to Ms. Magalie R. Salas ("Tyler STA Request"), which states in pertinent part:

The licensee [of Station KTSH] has suspended operations pending the installation of new equipment. It is presently anticipated that the equipment will be delivered in four to six weeks and that the installation can be completed within sixty days. Authority to remain silent for ninety days is, however, requested to allow for unforeseen circumstances.[²]

As demonstrated in Chisholm's Reply Comments, Station KTSH did not go off the air due to any "unforeseen circumstances." Instead, Tyler deliberately took KTSH off the air so that KATZ could commence program tests.

The record in this proceeding establishes that Tyler removed the lower bay of the KTSH end-fed Jampro 6-bay antenna from the supporting tower structure in order to make room for KAZC's single-bay antenna. *See* Chisholm Reply Comments, pp. 7, 11, 15 and Attach. E, Ex. 4. According to Tyler, KTSH went off the air on October 28, 1998, and KAZC commenced operation on the following day from the same location on the tower that the lowest bay of KTSH's antenna previously

¹ *See* Chisholm Reply Comments, p. 4, n.10.

² Tyler's STA Request does not comply with Section 73.1635(a) of the Commission's rules because it does not "fully describe the proposed operation and the necessity for the requested STA." 47 CFR §73.1635(a)(2).

had been located.³ In light of the facts presented in Chisholm's Reply Comments, Tyler's STA Request raises the following questions: (1) What "new equipment" must be installed? (2) Why did Tyler state that it will take "four to six weeks" to deliver the new equipment when the missing KTSH antenna bay is safely stored on top of the KTSH/KAZC studio room, and has been since it was removed from the tower? (3) Why will it take 60 days to remove the KAZC antenna and re-install the lower bay of the KTSH antenna when Tyler previously was able to: (i) remove the lowest bay of the KTSH antenna and disconnect the transmission line from that antenna; (ii) install the KAZC antenna and connect the transmission line to that antenna; and (iii) re-tune the KTSH transmitter to operate on KAZC's noncommercial frequency; all within 24 hours?⁴ and (4) Since the Jampro antenna used by KTSH is designed to permit any individual bay or bays to be used independently as an emergency antenna,⁵ if the single bay of the KTSH antenna which was removed from the tower is, in fact, damaged (as Tyler alleges), why did Tyler not return the remaining portion of the KTSH antenna on the tower to service in a suitable configuration? And why was the transmission line not left intact to permit KTSH to remain on the air?⁶

As demonstrated above, Tyler's representation to the Commission that KTSH is off the air due to "unforeseen circumstances," and his statements regarding the need to install new equipment

³ See Chisholm Reply Comments, Attach. C; Tyler Comments, Attachment.

⁴ See Chisholm Reply Comments, pp. 9, 11.

⁵ *Id.* at 14 (citing Attachment E, p. 7).

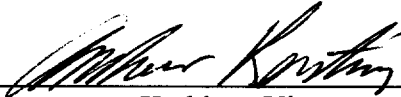
⁶ It is highly unlikely that the remaining five bays of the KTSH antenna are damaged because, if they were, it is plausible to assume that Tyler would have removed these portions of the KTSH antenna from the tower along with the individual bay to facilitate the necessary repairs.

for KTSH and the time that he claims is necessary to allow for the delivery and installation of such equipment, are completely false. Indeed, to the extent there is *any* truth in Tyler's STA Request, the new equipment that Tyler is referring to undoubtedly are the new transmitter, new transmission line, new studio equipment, and notch filtering devices necessary to permit KTSH and KAZC to operate simultaneously from the same site. Chisholm's November 3, 1998, Reply Comments establish that Tyler's October 27, 1998, STA Request is a further misrepresentation of material facts, which was filed solely in an effort to support his pending rulemaking petition. Therefore, Tyler's petition seeking to move KTSH from Tishomingo to Tuttle, Oklahoma, should be denied.

WHEREFORE, in light of the foregoing, Chisholm Trail Broadcasting Co., Inc. respectfully requests that the proposal to (i) delete Channel 259C3 at Tishomingo, Oklahoma, (ii) allot Channel 259C3 to Tuttle, Oklahoma, (iii) modify the license for Station KTSH, Tishomingo, to specify Tuttle as its community of license, and (iv) modify the license of Station KXLS, Channel 259C1, Alva, Oklahoma, to operate on Channel 260C1, be DENIED.

Respectfully submitted,

CHISHOLM TRAIL BROADCASTING CO., INC.

By: 

Kathleen Victory
Andrew S. Kersting

Its Counsel

Fletcher, Heald & Hildreth, P.L.C.
1300 North Seventeenth Street
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Arlington, Virginia 22209
(703) 812-0400
November 12, 1998
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ATTACHMENT

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DIRECT DIAL NUMBER:

October 27, 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OCT 28 2 30 PM '98

COUNSEL

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Ms. Magalie R. Salas
Secretary
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1919 M Street, N.W., #222
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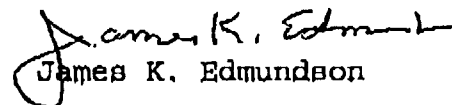
Re: KTSB(FM), Tishomingo, Oklahoma

Dear Ms. Salas:

Our client, Ralph H. Tyler, hereby respectfully requests authority for FM Broadcast Station KTSB, Tishomingo, Oklahoma, to remain silent for a period of ninety days. The licensee has suspended operations pending the installation of new equipment. It is presently anticipated that the equipment will be delivered in four to six weeks and that the installation can be completed within sixty days. Authority to remain silent for ninety days is, however, requested to allow for unforeseen circumstances. An Anti-Drug Abuse Certification is enclosed.

Please direct inquiries concerning this request to Gary S. Smithwick, Esquire, of this office or to the undersigned.

Sincerely,


James K. Edmundson

JKE/sls
Enclosure

cc with enclosure: Ms. Sharlene Loftis (FCC Room 342)

ANTI-DRUG ABUSE ACT CERTIFICATION

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OCT 27 1998

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The applicant certifies that, in the case of an individual applicant, he or she is not subject to a denial of federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. §853a, or, in the case of a non-individual applicant (e.g. corporation, partnership or other unincorporated association), no party to the application is subject to a denial of federal benefits pursuant to that section. For the definition of a "party" for these purposes, see 47 C.F.R. §1.2002(b).

☒

Yes

☐

No

Name of Applicant Ralph H. Tyler	Signature <i>Ralph H. Tyler</i>
Date October 26, 1998	Title Individual Licensee

CERTIFICATE OF SERVICE

I, Barbara Lyle, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that on this 12th day of November, 1998, copies of the foregoing "Supplement to Reply Comments" were hand delivered or mailed first-class, postage pre-paid, to the following:

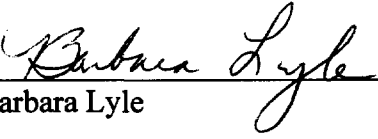
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* Hand Delivered